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No. 81-2344

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1981

A,

Petitioner,

vs.

X, Y, & Z

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SHEEHAN, STEVENS & SANSONETTI

Stanley S. Sheehan
Counsel for Respondents
P. O. Box 1148
Gillette, Wyoming 82716

On Appeal From
The Supreme Court of Wyoming

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WYOMING

I N T R O D U C T I O N

Petitioner contends that he, as a putative father, has been denied Equal Protection and Due Process in violation of Section One of the Fourteenth Amendment to the United States Constitution, by the decision of the District Court, Campbell County, Wyoming, as upheld by the Supreme Court of the State of Wyoming. The State Supreme Court held the petitioner has no standing to file a suit under the Wyoming Uniform Parentage Act to attempt to establish he is the biological father of a child born during the marriage of the natural mother and her husband, the presumed father. The Supreme Court

of the State of Wyoming in its decision held the petitioner has no standing and is not denied equal protection in that the legislative classification between natural mothers and putative fathers passes the Constutional standard of a substantial relationship to an important governmental interest. The Court held the petitioner was not denied due process in that the governmental interest preventing attacks on the family unit and legitimacy of the child outweighed the private interest of the putative father.

STATEMENT

Petitioner brought an action under the Wyoming Uniform Parentage Act, Section 14-2-101 to 14-2-120, W.S. 1977 (the Act) alleging he is the biological father of X. He alleged Z is the presumptive father because X was born during the marriage of Y and Z and he further alleged sexual intercourse occurred between he and Y.

The petitioner, A, presented in his "Statement of the Case" in the Petition for Writ of Certiorari, two items which were not before the lower courts in any pleadings. He has referred:

1. to a prior marriage and divorce between A (the petitioner) and Y (the natural mother); and
2. that A and Y "co-habited" following the divorce (Petition for Writ of Certiorari, page 5).

These are both matters not alleged in any prior pleading. A copy of the amended complaint has been included as Appendix A to this brief.

Blood tests were taken by stipulation of the parties which indicated a 98.2% probability that A is the biological father. Prior to the hearing of any evidence, X, Y, and Z filed a motion to dismiss the action due to A's lack of standing.

The District Court granted the Motion to Dismiss holding the petitioner has no standing under the Act and that such denial is not a violation of the Equal Protection and Due Process Clauses of the Wyoming and United States

Constitutions. Petitioner appealed to the Supreme Court of the State of Wyoming. The Supreme Court affirmed the decision by the District Court, holding the petitioner lacked standing under the Act. The Court further held there was no violation of the Equal Protection Clause of the Wyoming Constitution and United States Constitution, as the classifications within the act clearly meet the test of bearing a substantial relationship to an important governmental interest. That governmental interest referred to by the Court is protecting the family as a unit and the legitimization of children born therein. The Court further held that Due Process was not denied the petitioner because the governmental function of protecting the family unit and legitimacy of the child far outweighs the private interest of the putative father. A vs. X, Y & Z, 641 P.2nd 1222 (Wy.1981).

REASONS FOR REFUSING THE WRIT

1. EQUAL PROTECTION. The Supreme Court of the State of Wyoming properly determined that petitioner is not denied equal protection of the law. The petitioner seeks a review of the decision because he claims the gender-based classification of the Act denies an equal protection under the law. The Court held the classification is not gender-based but if considered so, would meet the required tests stating:

> The classification is based on the distinction between those within the family unit and those without regardless of gender. It recognizes a difference between instances in which legitimacy and the interest of the child can be protected and those instances where such has already been violated. The nongender-based classification furthers important governmental objectives and has a substantial relationship thereto. If the

> classification can be said to be gender-based, it is not invidous but only realistically reflects the fact that sexes are not similarly situated in these circumstances. And, it is proper under any of the standards applied to it. Id. at 1226.

The Court in so holding is stating that the classifications within the Act are designed to relate to the circumstances and relationship of the parties involved and not gender alone. There are circumstances where the putative father may maintain an action, i.e. where no presumed father exists, Sec. 14-2-104(c), W.S. 1977. A presumed father may bring an action to determine the existence or non-existence of a parent-child relationship, Sec. 14-2-104(a)(i), W.S. 1977.

The interest of the State of Wyoming in the classifications set forth in the Act were clearly and forcefully stated as the Supreme

Court's decision quoted from the opinion of the District Court:

> ...The State has an interest in protecting and preserving the integrity of the family unit. (Citation omitted) It also has an interest in protecting the best interest of the child. Even in this era of no-fault divorce, frequent premarital sex and co-habitation and new attitudes toward child rearing, a child has a right to legitimacy and that right is one the State is bound to protect during minority. (Citation omitted)
>
> The statute is a legitimate attempt by the Legislature to protect the family unit and the children from external forces. A suit by one outside the marriage, such as in this case, could well destroy a marriage...Id. at 1225.

The test where a classification is in fact gender-based is that of requiring the classification to bear a subtantial relationship

to important governmental objectives. Craig v. Boren, 429 U.S. 190, 50 L.Ed.2d 397 (1976), Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 67 L.Ed.2d 437 (1981). The Supreme Court of the State of Wyoming in addressing the classifications within the Act and the question of allowing someone to attack the legitimacy of a child directed itself to the required standards stating:

> The legislative classification is reasonable and bears a fair and substantial relationship to important governmental objectives. It passes a constitutional challenge regardless of the standard by which measured. A v. X,Y,Z supra, at 1226.

The Court by its decision has upheld those important governmental objectives as enacted by the Legislature.

2. DUE PROCESS. As indicated in Smith v. Organization of Foster Familes, 431 U.S. 816, 53 L.Ed.2d 14, 31 (1977), the Court's first

inquiry relative to due process must be whether the party asserting the violation has an interest within the Fourteenth Amendment protection. No such right exist in this case. The series of cases considering the procedural due process problem involves the situations where an acknowledged right and/or existing relationship is sought to be terminated by some action of the State. Smith v. The Organization of Foster Familes, Id.; Quilloin v. Wolcott, 434 U.S. 246, 54 L.Ed.2d 511 (1978); Stanley v. Illinois, 405 U.S. 645, 31 L.Ed.2d 551 (1972).

For the Court to provide some form of hearing regarding the putative father would be to negate the protection established for the family by the Legislature. Once an action is brought and any form of hearing is held, the family unit has been attacked and harm done, regardless of the outcome of the initial hearing or any subsequent determination by the court.

A hearing is not required in all cases under the Due Process Clause. The procedures required are determined by the circumstances and begin with the determination of the nature of the government function and the private interest that is affected. Stanley v. Illinois, supra at 650. The government function involved in this case is nothing more than the Legislative determination that a putative father under these circumstances has no right to bring an action. The State under these circumstances is not actively involved in the termination of some existing and acknowledged relationships.

The Wyoming Supreme Court summarized its opinion quoting from the District Court's opinion letter:

> I don't believe that a statute which prevents a biological father from bastardizing a child violates due process of law. It appears that the Legislature has carefully weighed the various social values and decided that

> the biological father's rights are subordinate to the collective rights of the child, the mother, the presumed father and the family unit. A v. X, Y, Z, supra at 1227.

CONCLUSION

The Supreme Court of the State of Wyoming correctly held that the petitioner has not been denied Equal Protection and Due Process under the Fourteenth Amendment. The Petition for Certiorari should not be granted because the issues in this case involve questions of local governmental interest.

The Wyoming Legislature, in its adoption of the Wyoming Uniform Parentage Act, did not grant standing to an alleged biological father to seek a determination of paternity where a presumed father exists. The family itself has not waived its protection. This was not an oversight by the Legislature, but rather a responsible government action designed to

protect the legitimacy of children and the family as a unit.

As society seeks to govern itself through the implementation of laws, restrictions on the actions and rights of individuals will occur. A State Legislature in enacting any law, is balancing the interest of the State (i.e. society as a whole), and the individual. The Constitutional mandates of Equal Protection and Due Process are some of the guidelines to test these legislative actions. The Supreme Court of the State of Wyoming has applied these tests and held they have been met.

The State of Wyoming has an interest in protecting the family as a unit. It has an interest in protecting the legitimacy of children. The State has an interest in preserving the marriage. The importance of such relationships was recognized by this Court in Smith v. Organization of Foster Families, supra at 844, wherein it is stated:

> The basic foundation of the family in our society, the marriage relationship, is of course not a matter of blood relation. Yet its importance has been strongly emphasized in our cases: 'We deal with the right of privacy older than the Bill of Rights--older than our political parties, older than our school system. Marriage is coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political base; a bi-lateral loyalty, not commercial or social projects. It is an association for as noble a purpose as any involved in our prior decisions.' (Citations omitted)

It is this relationship the Petitioner seeks to intrude upon through the assertions his

complaint. It is therefore respectfully submitted that the Petition for Certiorari should be denied.

October, 1982.

Respectfully submitted,

SHEEHAN, STEVENS & SANSONETTI
Stanley S. Sheehan
P. O. Box 1148
Gillette, Wyoming 82716
(307) 682-8809
Attorneys for Respondents

APPENDIX "A"

STATE OF WYOMING	IN THE DISTRICT COURT	
COUNTY OF CAMPBELL	SIXTH JUDICIAL DISTRICT	
DOUGLAS EARL BRIGGS, Plaintiff, vs. LORI GENE EDWARDS, LINDSAY ELISE EDWARDS and JOSEPH LEON EDWARDS, Defendants.	)	Civil Action No. 10789

AMENDED COMPLAINT

COMES NOW the plaintiff, Douglas Earl Briggs by and through his attorney, John M. Daly, and states and alleges as follows:

1. That this action is brought pursuant to the Wyoming Uniform Parentage Act, Wyoming Section 14-2-101 through Section 14-2-120.

2. That the jurisdiction of the court is founded upon Wyoming Section 14-2-106b.

3. That the father is bringing the action pursuant to Wyoming Section 14-2-101 and affirmatively alleges that he is the biological father of the child born to the defendant, Lori Gene Edwars and the child's name is Lindsay Elise Edwards.

4. The plaintiff affirmatively alleges that Joseph Leon Edwards is the presumptive father of Lindsay Elise Edwards.

5. The plaintiff affirmatively alleges that sexual intercourse occurred between himself and the defendant in early November of 1979 in the State of Wyoming and that there is a statistical probability of the plaintiff's paternity based upon the duration of the mother's pregnancy and there is a statistical probability that the blood tests weighed in accordance with the evidence will show that the plaintiff is the biological father and there may be medical and anthropological evidence which will relate to the plaintiff's paternity based upon tests performed by experts.

6. The plaintiff affirmatively asserts that the child will have needs.

7. The plaintiff is with financial means to provide for the child and desires to do so.

8. The plaintiff desires and seeks visitation of the child.

WHEREFORE, the plaintiff prays that:

1. That the plaintiff be declared the father of the child.

2. That, as the father of the child, the birth records of the child be changed and that the presumptive father's name be stricken from those birth records.

3. That the plaintiff be given the rights of visitation and an obligation of support.

4. That the plaintiff stands ready, willing and able to pay the costs of the pregnancy, the

fee of the guardian ad litem, and the costs of the action herein.

DATED this 11th day of March, 1981.

s/John M. Daly
Attorney at Plaintiff
Of The Firm of
DALY, MAYCOCK, ANDERSON & TAYLOR
P. O. Box 38
Gillette, Wyoming 82716

CERTIFICATE OF SERVICE

I, John M. Daly, do hereby certify that I served the above and foregoing Amended Complaint upon the defendants by placing a true and correct copy thereof in the United States Mail, postage prepaid, addressed to the defendant's attorneys:

Mr. Dan Price
306 S. Gillette Ave.
Gillette, Wyo. 82716

Mr. Francis E. Stevens
1900 Energy Building
Gillette, Wyo. 82716

on this 11th day of March, 1981.

s/John M. Daly